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06                   UNITED STATES DISTRICT COURT  
07                   WESTERN DISTRICT OF WASHINGTON  
08                   AT SEATTLE

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RICHARD R. SAINTCALLE,	)	CASE NO. C06-0040-MJP
Plaintiff,	)	
v.	)	REPORT AND RECOMMENDATION
C/O L. RODRIGUEZ, et al.,	)	
Defendants.	)	

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14                   INTRODUCTION AND SUMMARY CONCLUSION

15       Plaintiff is a state prisoner who is currently incarcerated at the Monroe Correctional  
16 Complex in Monroe, Washington. He brings this civil rights action under 42 U.S.C. § 1983 to  
17 allege violations of his constitutional rights while in the custody of the King County Department  
18 of Adult and Juvenile Detention in 2003. Specifically, plaintiff alleges that King County  
19 Corrections Officers Luis Rodriguez and Mark Hurt violated his due process rights by failing to  
20 protect him from a physical attack by his son, Kirk SaintCalle, during plaintiff's criminal trial in  
21 King County Superior Court.

22       Defendants now move for summary judgment. Plaintiff has filed a response to defendants'

01 motion and defendants have filed a reply brief in support of their motion. The briefing is complete  
02 and defendants' motion for summary judgment is now ripe for review. This Court, having  
03 reviewed defendants' motion, and the balance of the record, concludes that defendants' motion  
04 for summary judgment should be granted and this action should be dismissed with prejudice.

05                   FACTS

06                 Plaintiff Richard SaintCalle and Kemhare Germain had two children together, Kirk, born  
07 in 1985, and Elizabeth, born in 1989. (Dkt. No. 36-2 at 2.) On the evening of August 14, 2002,  
08 at approximately 11:30 p.m., plaintiff met Ms. Germain in the parking lot of her apartment  
09 complex. (*Id.*) They engaged in a heated discussion until approximately 1:00 a.m. on August 15,  
10 2002. (*Id.*) Ms. Germain then went into her apartment and locked the door. (*Id.*) Her daughter  
11 Elizabeth was in the apartment seated on the sofa. (*Id.*) Plaintiff shot through the door with a  
12 shotgun and entered the apartment. (*Id.*) Plaintiff asked Elizabeth where her mother was and then  
13 shot Elizabeth twice, at close range, severely injuring her. (*Id.*) Plaintiff proceeded into the  
14 master bedroom and shot Ms. Germain twice, at close range, killing her. (*Id.*)

15                 Witnesses saw plaintiff leave the apartment and drive away in his car. (*Id.*) Police, who  
16 had responded to a 911 call, followed plaintiff's car with their lights and sirens activated. (*Id.*)  
17 Plaintiff led police on a high speed chase, reaching speeds of up to 125 miles per hour, and did not  
18 stop until a police car rammed into his car, causing it to crash. (*Id.*) Plaintiff was booked into the  
19 King County Jail at the Regional Justice Center on the morning of August 15, 2002, for  
20 investigation of homicide, investigation of attempted homicide, and investigation of felony flight.  
21 (Dkt. No. 39, Ex. 2-B.)

22                 On August 19, 2002, an information was filed in King County Superior Court charging

01 plaintiff with the crimes of murder in the first degree, attempted murder in the first degree, and  
02 attempting to elude a pursuing police vehicle. (Dkt. No. 36, Ex. 1-B.) Bail was originally set at  
03 \$2,000,000, but was later raised to \$4,000,000. (*Id.*, Exs. 1-B and 1-C.) Plaintiff's criminal trial  
04 began on October 12, 2003, before King County Superior Court Judge Richard McDermott, and  
05 ended on November 13, 2003. (Dkt. No. 38 at 1-2.)

06 Defendants Rodriguez and Hurt are both employed as corrections officers for the King  
07 County Department of Adult Detention. (Dkt. No. 38 at 1; Dkt. No. 39 at 1.) Both were  
08 assigned to the court detail for plaintiff's trial. (*Id.*) Court detail officers are responsible for  
09 transporting inmates to and from court, medical appointments, and other destinations as required.  
10 (*Id.*) Defendant Rodriguez spent a considerable amount of time with plaintiff while transporting  
11 him to and from court during the course of the month-long trial. (Dkt. No. 39 at 1-2.) Defendant  
12 Hurt transported plaintiff to and from court on fifteen of the trial days. (Dkt. No. 38 at 2.) At  
13 no time during the course of his contact with defendants did plaintiff ever report to either of them  
14 that he had been threatened by his son or by anyone else. (Dkt. No. 38 at 2; Dkt. No. 39 at 2.)

15 Kirk SaintCalle ("Kirk") testified at plaintiff's trial on October 29, 2003. (Dkt. No. 39 at  
16 2.) The day before Kirk testified, the trial judge discussed courtroom security issues with the  
17 parties and with an unidentified custodial officer because of concerns regarding Kirk's behavior  
18 while on the stand.<sup>1</sup> (*See* Dkt. No. 46, Ex. 4A.) Among the determinations made at that time was  
19 that the two court detail officers who transported plaintiff to the courtroom, and the two court  
20 detail officers who transported Kirk, would all remain in the courtroom while Kirk testified. (*See*

21  
22 <sup>1</sup> Kirk was in custody at that time and was therefore to be transported to court by court  
detail officers. (Dkt. No. 39 at 2.)

01 Dkt. No. 46, Ex. 4A.) Defendants concede that they were both in the courtroom on October, 28,  
02 2003, however, neither apparently recalls the substance of any discussions that occurred in the  
03 courtroom on that date. (*See* Dkt. No. 43, Ex. J at 3 and Ex. K at 3.) According to plaintiff, both  
04 defendants participated in the discussion regarding courtroom security on that date. (Dkt. No. 43  
05 at 8.)

06 Only defendant Rodriguez was present in the courtroom on the day Kirk testified. (*See*  
07 Dkt. No. 38 at 2 and Dkt. No. 39 at 2.) Defendant Rodriguez recalls that Kirk was angry and  
08 expressed animosity towards plaintiff during his testimony, but does not recall the specifics of  
09 Kirk's testimony. (Dkt. No. 39 at 2.) Kirk, in fact, admitted during his testimony that since his  
10 mother was killed and his sister was shot he had threatened to kill plaintiff. (Dkt. No. 46, Ex. 4B.)

11 On November 12, 2003, defendants transported plaintiff to court for closing arguments.  
12 (Dkt. No. 38 at 2; Dkt. No. 39 at 2.) Kirk, who had been released from custody, was in the  
13 courtroom for closing arguments. (Dkt. No. 38 at 2; Dkt. No. 39 at 2.) He was seated in the  
14 second row behind the prosecutor's table with other family members and friends of the victims.  
15 (*Id.*) Kirk was not disruptive during the closing arguments nor did he act in any way that would  
16 indicate he would cause problems. (*Id.*)

17 At the conclusion of closing arguments, after the jury had returned to the jury room, Kirk  
18 rushed forward and swung at plaintiff's head. (Dkt. No. 38 at 2; Dkt. No. 39 at 3.) Defendant  
19 Rodriguez, who was standing next to plaintiff at that time preparing to place him into handcuffs,  
20 attempted to deflect Kirk's arm with his shoulder. (Dkt. No. 39 at 3.) Kirk, however, was  
21 apparently able to make some contact with the side of plaintiff's head. (*Id.; see also*, Dkt. No. 46,  
22 Ex. 4C.) Plaintiff dropped to the floor, and defendants Rodriguez and Hurt grabbed Kirk and took

01 him to the floor. (Dkt. No. 39 at 3.) Federal Way Police Detective Tom Robinson, who was  
02 present in the courtroom, assisted defendants in restraining and handcuffing Kirk. (Dkt. No. 38  
03 at 2; Dkt. No. 39 at 3.) After Kirk was restrained, defendant Rodriguez picked plaintiff up off the  
04 floor and took him to a holding cell. (*See* Dkt. No. 38 at 3; Dkt. No. 39 at 3.) Detective  
05 Robinson placed Kirk under arrest at the direction of Judge McDermott. (*Id.*)

06 Plaintiff states that he was knocked-out cold by Kirk's blow and that he fell to the ground  
07 unconscious. (Dkt. No. 43 at 4.) Defendant Rodriguez, in contrast, states that plaintiff was  
08 conscious and alert at all times and that he did not have any difficulty walking or moving. (Dkt.  
09 No. 39 at 3.) Defendant Rodriguez further states that he visually examined plaintiff after the  
10 incident and plaintiff did not appear to be injured, but he did appear to be angry. (*Id.*)

11 Medical staff responded to a "Medical Status II court detail call" shortly after the incident.  
12 (*See* Dkt. No. 47 at 2 and 4.) The nurse who responded to that call noted that plaintiff was pacing  
13 in his cell and was refusing any medical help until he could be seen by his attorney. (*See id.*) The  
14 nurse also noted that plaintiff refused to sign the refusal of treatment form. (Dkt. No. 47 at 2 and  
15 4.) Finally, the nurse noted that plaintiff did not appear to be in any discomfort, but that he did  
16 appear to be angry. (*Id.*)

17 The nurse returned a short time later, at the request of the officer in charge of the court  
18 detail, to examine plaintiff. (*Id.*) At that time, plaintiff complained of migraine-like pain on the  
19 right side of his head radiating to his neck. (*Id.*) The nurse took plaintiff's blood pressure and  
20 conducted a neurological check, which was apparently normal. (*Id.*) The nurse indicated in her  
21 notes that a neurological check, and a blood pressure reading, would be conducted each shift.  
22 (*Id.*)

01 Plaintiff was seen by another nurse on the evening of November 12, 2003. (*Id.*) At that  
02 time, plaintiff complained of right parietal discomfort as well as tongue and jaw aches. (Dkt. No.  
03 47 at 2-4.) Plaintiff denied, however, being struck in the jaw/mouth. *Id.* at 3-4.) The nurse who  
04 evaluated plaintiff that evening observed no signs of injury to the right side of plaintiff's face or  
05 mouth and noted that plaintiff's neurological check was normal. ( *Id.*) Plaintiff's neurological  
06 checks were all normal and were discontinued the following day. (*Id.* at 3-4 and 6.)

07 On November 16, 2003, four days after the incident, plaintiff requested that he be seen by  
08 a nurse for bleeding in his nose. (See Dkt. No. 43, Ex. H at 1.) He reported at that time that he  
09 was experiencing head tremors and that he felt he should be transported to the hospital for an  
10 MRI. (See Dkt. No. 43, Ex. H at 1 and Dkt. No. 47 at 5.) The nurse observed a small ulcer in  
11 plaintiff's nose, but did not observe any tremors. (Dkt. No. 47 at 5.)

12 Plaintiff was convicted of aggravated first degree murder, attempted first degree murder,  
13 and attempting to elude a police officer on November 13, 2003. (See Dkt. No. 36-6 at 2.) On  
14 December 19, 2003, plaintiff was sentenced to a term of life imprisonment. (*Id.* at 5.)

15 Plaintiff filed the instant civil rights complaint in January 2006, and the complaint was  
16 thereafter ordered served on defendants. (Dkt. Nos. 6 and 7.) After defendants answered the  
17 complaint, the Court established pre-trial deadlines, including a discovery deadline of August 15,  
18 2006, and a dispositive motion filing deadline of September 15, 2006. (Dkt. No. 34.) Defendants  
19 filed their summary judgment motion in August 2006. (Dkt. No. 35.) In support of their motion,  
20 defendants submitted the declarations of defendants Rodriguez and Hurt, and a declaration of their  
21 attorney, Kerry Keefe. (See Dkt. Nos. 36, 38, and 39.) Plaintiff filed a response and declaration  
22 in opposition to defendants' motion, (see Dkt. Nos. 42 and 43), and defendants filed a reply brief

01 and a second declaration of Ms. Keefe in support of their motion (*see* Dkt. Nos. 45 and 46).

02 In conjunction with his response to defendants' summary judgment motion, plaintiff also  
03 filed a motion for appointment of counsel. (*See* Dkt. No. 40.) After the briefing was complete  
04 on defendants' summary judgment motion, plaintiff filed motions for an order to obtain the King  
05 County Jail records of Kirk, and for issuance of a subpoena duces tecum to obtain additional  
06 evidence from his trial counsel. (*See* Dkt. Nos. 49 and 51.) Defendants have filed responses to  
07 plaintiff's pending motions, and those motions will be addressed herein.

08 DISCUSSION

09 Summary Judgment Standard

10 Summary judgment is appropriate when, viewing the evidence in the light most favorable  
11 to the nonmoving party, there exists "no genuine issue as to any material fact" such that "the  
12 moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). A material fact  
13 is a fact relevant to the outcome of the pending action. *See Anderson v. Liberty Lobby, Inc.*, 477  
14 U.S. 242, 248 (1986). Genuine issues of material fact are those for which the evidence is such that  
15 "a reasonable jury could return a verdict for the nonmoving party." *Id.*

16 In response to a properly supported summary judgment motion, the nonmoving party may  
17 not rest upon mere allegations or denials in the pleadings, but must set forth specific facts  
18 demonstrating a genuine issue of fact for trial and produce evidence sufficient to establish the  
19 existence of the elements essential to his case. *See Fed. R. Civ. P. 56(e)*. A mere scintilla of  
20 evidence is insufficient to create a factual dispute. *See Anderson*, 477 U.S. at 252. In ruling on  
21 summary judgment, the court does not weigh evidence to determine the truth of the matter, but  
22 "only determine[s] whether there is a genuine issue for trial." *Crane v. Conoco, Inc.*, 41 F.3d 547,

01 549 (9th Cir. 1994).

02 Failure to Protect Claim

03 Plaintiff asserts in his complaint that he was attacked by his son Kirk in open court on  
 04 November 12, 2003, while in the custody of King County Corrections Officers Rodriguez and  
 05 Hurt. (See Dkt. No. 6.) Plaintiff alleges that defendants Rodriguez and Hurt knew his attacker  
 06 was in the courtroom. He further alleges that defendants should have known plaintiff faced a  
 07 substantial risk of injury or death at the hands of his attacker and that they disregarded that risk.

08 Section 1983 requires a claimant to prove (1) that a person acting under color of state law  
 09 (2) committed an act that deprived the claimant of some right, privilege, or immunity protected  
 10 by the Constitution or laws of the United States. *Leer v. Murphy*, 844 F.2d 628, 632-33 (9th Cir.  
 11 1988). There is no dispute here that the defendants acted under color of state law. The sole issue  
 12 is whether the defendants' conduct deprived plaintiff of a federally protected right.

13 In *Redman v. County of San Diego*, 942 F.2d 1435 (9th Cir. 1991), the Ninth Circuit  
 14 recognized the right of a pretrial detainee to be personally secure while in the custody of the State.  
 15 The Ninth Circuit held that in order to show that officials violated that right, a plaintiff must show  
 16 that they acted with "deliberate indifference" towards the safety of the plaintiff. *Id.* at 1443. The  
 17 Ninth Circuit further held that "conduct that is so wanton or reckless with respect to the  
 18 unjustified infliction of harm as is tantamount to a knowing willingness that it occur, will also  
 19 suffice to establish liability because it is conduct equivalent to a deliberate choice. This may be  
 20 termed 'reckless indifference.'" *Id.* (citations omitted). Both terms – "deliberate" or "reckless"  
 21 indifference – connote states of mind that are more blameworthy than mere negligence. See  
 22 *Farmer v. Brennan*, 511 U.S. 825, 835 (1994).

01 Defendants deny that they were deliberately indifferent or showed a reckless disregard to  
02 plaintiff's safety. In their declarations offered in support of their summary judgment motion,  
03 defendants state that plaintiff never reported to them that he was receiving or had received threats  
04 from Kirk, or that Kirk was behaving in such a way in the courtroom on November 12, 2003, that  
05 would lead them to believe that he was going to cause problems. They further state that Kirk had  
06 been present in the courtroom as a spectator on previous days and never gave them any reason to  
07 believe he would physically attack his father or be otherwise disruptive in court. Defendants also  
08 point out that Kirk was not under their custody or control at the time of the incident but, rather,  
09 was a member of the general public who was attending a public proceeding. And, because Kirk  
10 was not being disruptive while in the courtroom, defendants had no reason, nor any authority, to  
11 remove him from the courtroom.

12 Plaintiff, in his response to defendants' motion, argues that even if he did not report to  
13 them that he had received threats from Kirk, they had nevertheless been exposed to information  
14 concerning the risk posed by Kirk and they therefore should have taken additional steps to ensure  
15 plaintiff's safety when Kirk was in the courtroom. Plaintiff maintains that defendants were  
16 exposed to information regarding Kirk's threats while on duty in the courtroom. He also suggests  
17 that defendants were exposed to other information about Kirk which should have put them on  
18 notice that Kirk, in fact, posed a significant risk to plaintiff's safety. The other information cited  
19 by plaintiff includes: (1) plaintiff had reported to jail administrative staff prior to his trial that Kirk  
20 had made threats to kill him and/or had solicited other inmates to harm or kill him; (2) Kirk had  
21 a violent jail disciplinary record; (3) there were "keep separate" notices against Kirk in plaintiff's  
22 jail file; (4) the jail had access to a police report of Kirk's arrest in Federal Way in which Kirk

01 confessed a plan to kill plaintiff; (5) Kirk sent a letter to plaintiff while both were incarcerated in  
02 which Kirk threatened to kill him; and, (6) Kirk reiterated his threat to kill plaintiff to the  
03 prosecuting attorney when he visited Kirk in prison prior to plaintiff's trial.

04 While plaintiff imputes knowledge of all of this information to defendants, the evidence in  
05 the record establishes only that defendants had some exposure in the courtroom to information  
06 regarding the animosity that existed between plaintiff and his son. The record reflects that both  
07 defendants were in the courtroom on the day the Court discussed the security measures that were  
08 to be employed while Kirk was in the courtroom testifying. (Dkt. No. 43, Ex. J at 3 and Ex. K  
09 at 3.) Though neither defendant apparently now recalls that discussion, the transcript of that  
10 proceeding reveals that the prosecutor made reference to the fact that he expected Kirk to  
11 acknowledge that he had had thoughts of killing his father. (Dkt. No. 46, Ex. 4A at 4.) The  
12 transcript also reveals that the trial judge expressed his concern about having both Kirk and  
13 plaintiff in the courtroom at the same time, and made clear that his concern was about Kirk and  
14 not about plaintiff. (*Id.*)

15 On the day Kirk testified, defendant Rodriguez was in the courtroom, but defendant Hurt  
16 was not. (Dkt. No. 38 at 2; Dkt. No. 39 at 2.) While defendant Rodriguez states that he does not  
17 now remember specifics about Kirk's testimony, the partial transcript of that proceeding which  
18 has been provided to this Court reveals that Kirk testified that he had threatened to kill plaintiff  
19 and that he had previously indicated that he had a vendetta for his father. (Dkt. No. 46, Ex. 4B  
20 at 3-4.)

21 Based on the foregoing, some knowledge of the possible risk posed by Kirk to plaintiff's  
22 safety must be imputed to defendants. However, even assuming defendants had some knowledge

01 of the animosity that existed between Kirk and plaintiff, defendants cannot be held liable if they  
02 responded reasonably to that risk. *See Farmer*, 511 U.S. at 844-45. Plaintiff argues that  
03 defendants should have taken additional steps to protect him in the courtroom including re-  
04 positioning themselves when Kirk was in the courtroom to allow them to intercept him, requesting  
05 back-up from the court detail sergeant, or informing the bailiff and the judge and requesting that  
06 they address the risk created by Kirk's presence.

07 However, the record does not demonstrate that Kirk's behavior on the day in question  
08 warranted any of the steps suggested by plaintiff. Defendants were aware of Kirk's presence, but  
09 he was not causing any disruption and defendants therefore had no reason to ask Kirk to leave or  
10 to request additional security. The record establishes that the assault happened quickly and  
11 without warning. After Kirk swung at, and apparently hit, plaintiff, he was immediately taken to  
12 the ground by defendants and put under their control. While plaintiff asserts that he lost  
13 consciousness, he provides no evidence to support that assertion and, in fact, the record does not  
14 support the conclusion that plaintiff suffered any significant injury as a result of the assault.

15 There is some question as to where defendants were positioned in the courtroom at the  
16 time of the incident. However, defendant Hurt states in his declaration that the courtroom was  
17 fairly small. The fact that defendants gained control over Kirk quickly, before he was able to  
18 cause any significant injury to plaintiff, lends support to the conclusion that defendants were  
19 positioned in fairly close proximity to the counsel tables as both defendants state in their  
20 declarations. It is not clear what else defendants might have done, within the limits of their  
21 authority, to protect plaintiff in the courtroom on the day of the assault.

22 Plaintiff has not established that defendants acted with either "deliberate" or "reckless"

01 indifference to his safety. At most, and with the benefit of hindsight, it might be said that  
02 defendants acted negligently in failing to anticipate the potential risk posed by Kirk's presence in  
03 the courtroom on the day in question. However, as noted earlier, negligence is not sufficient to  
04 establish liability in a "failure to protect" claim. *See Farmer v. Brennan*, 511 U.S. 825, 835  
05 (1994). Accordingly, defendants are entitled to summary judgment.

06 Plaintiff's Pending Motions

07 Plaintiff has filed three motions which are currently pending before the Court: (1) a motion  
08 for appointment of counsel; (2) a motion for an order to obtain the King County Jail records of  
09 Kirk SaintCalle; and, (3) a motion for issuance of a subpoena duces tecum to obtain additional  
10 evidence from his trial counsel. This Court, having reviewed plaintiff's pending motions, and  
11 defendants' responses thereto, concludes that each of plaintiff's motions should be denied.

12 Plaintiff's motion for appointment of counsel is the second such motion filed during the  
13 pendency of this action. (*See* Dkt. No. 8.) As plaintiff was previously advised, there is no right  
14 to have counsel appointed in cases brought under 42 U.S.C. § 1983. Although the Court, under  
15 28 U.S.C. § 1915(e)(1), can request counsel to represent a party proceeding *in forma pauperis*,  
16 the Court may do so only in exceptional circumstances. *Wilborn v. Escalderon*, 789 F.2d 1328,  
17 1331 (9th Cir. 1986); *Franklin v. Murphy*, 745 F.2d 1221, 1236 (9th Cir. 1984); *Aldabe v.*  
18 *Aldabe*, 616 F.2d 1089 (9th Cir. 1980). A finding of exceptional circumstances requires an  
19 evaluation of both the likelihood of success on the merits and the ability of the plaintiff to  
20 articulate his claims pro se in light of the complexity of the legal issues involved. *Wilborn*, 789  
21 F.2d at 1331.

22 As this Court has concluded that plaintiff should not succeed on the merits, and as the

01 record demonstrates that plaintiff has ably represented himself in these proceedings, there are no  
02 exceptional circumstances which warrant the appointment of counsel in this matter.

03 Plaintiff's two remaining motions are, in essence, discovery requests. These motions were  
04 both filed on October 11, 2006. As noted above, the discovery deadline in this matter was August  
05 15, 2006. Plaintiff should not be permitted to re-open discovery almost two months after the  
06 deadline has passed. Additionally, the Court notes that plaintiff makes no showing that the  
07 information he seeks by way of these tardy discovery requests is relevant to plaintiff's claims  
08 against defendants Rodriguez and Hurt.

## **CONCLUSION**

10 Based upon the foregoing, this Court recommends that defendant's motion for summary  
11 judgment be granted, and that this action be dismissed with prejudice. This Court further  
12 recommends that plaintiff's motion for appointment of counsel, and plaintiff's two discovery  
13 motions, be denied. A proposed order accompanies this Report and Recommendation.

14 DATED this 4th day of December, 2006.

  
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Mary Alice Theiler  
United States Magistrate Judge